

REMARKS

Applicant has cancelled claim 52, without prejudice or disclaimer of its subject matter. In addition, Applicant has amended claims 44, 47, 51, and 62, as indicated herein. Upon entry of this Amendment, claims 33-51 and 53-62 remain pending and under current examination.

Applicants respectfully traverse the following objection and rejections:

- (a) rejection of claims 47 and 60-62 under 35 U.S.C. § 101 as
being directed to non-statutory subject matter;
- (b) objection to claim 52 as being in improper form; and
- (c) rejection of claims 33-62 under 35 U.S.C. § 102(b) as being
anticipated by U.S. Patent Application Publication No.
2003/0055738 (“*Alie*”).

Rejection of Claims 47 and 60-62 under 35 U.S.C. § 101:

The Office Action asserted that claim 47 recites “a computer program, which is interpreted as software per se.” Office Action, page 2. In response, and without conceding to the Office Action’s assertions, Applicant has amended claim 47 to recite a computer-readable medium encoded with a computer program product. As described in the U.S. Patent and Trademark Office’s recently issued *Interim Examination Instructions for Evaluating Subject Matter Eligibility under 35 U.S.C. § 101* (Aug. 2009), “a claim to a non-transitory, tangible computer readable storage medium *per se* that possesses structural limitations under the broadest reasonable interpretation standard to qualify as a manufacture would be patent-eligible subject matter.” *Interim Instructions* at 4. This amendment overcomes the 35 U.S.C. § 101 rejection of claim 47, and Applicant accordingly respectfully requests its withdrawal.

Regarding claims 60-62, the Office Action alleged that Applicant's claimed "authentication kit" "is interpreted as software per se." Office Action, page 3. The Office Action further alleged that "[c]laims 60-62 are not statutory because they are directed towards authentication kit comprising information stored in module(s) which could be implemented via software alone." *Id.* Applicant respectfully disagrees, and points out that the Office Action misinterpreted the claim language. For example, independent claims 60 and 62 each recite "[a]n authentication kit ... comprising: ... a computer peripheral device ...," which is clearly not "software alone." Applicant's claimed "authentication kit" is clearly statutory under 35 U.S.C. § 101. *See Interim Instructions* at 3. Therefore, independent claims 60 and 62 should be allowable. Claim 61 should also be allowable, at least by virtue of its dependence from claim 60. Applicant respectfully requests withdrawal of the 35 U.S.C. § 101 rejection of claims 60-62.

Objection to Claim 52 under 37 C.F.R. § 1.75(c):

The objection to claim 52 is moot by virtue of its cancellation.

Rejection of Claims 33-62 under 35 U.S.C. § 102(b):

The rejection of claim 52 is moot by virtue of its cancellation. Applicant requests reconsideration and withdrawal of the rejection of claims 33-51 and 53-62 under 35 U.S.C. § 102(b) as being anticipated by *Alie*.

Applicant first points out that the rejection is legally deficient, because the Office Action failed to address the pertinence of the cited reference to each limitation of claims 33-51 and 53-62. 37 C.F.R. § 1.104(c) requires the Examiner to provide more than merely stating that a claim is rejected based on a reference. In particular, 37 C.F.R. § 1.104(c)(2) states:

When a reference is complex or shows or describes inventions other than that claimed by the appellant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

However, the Office Action did not address the pertinence of *Alie* to each limitation of claims 33-51 and 53-62. Instead, the Office Action merely restated or paraphrased each of Applicant's claims, and cited a very large range of paragraphs within *Alie* (*see*, for example, Office Action, pages 4-7, where the Examiner cited the same range of paragraphs [0070-0096] when rejecting independent claims 33, 44, 48, 53, 60, and 62), without any explanation of why such a range of paragraphs of *Alie* would be considered pertinent to each of the features recited in Applicant's claims. As such, the rejection of claims 33-51 and 53-62 under 35 U.S.C. § 103(a) does not meet the requirements of 37 C.F.R. § 1.104 and is thus improper. Therefore, Applicant requests that the next action from the Office, if not a Notice of Allowance, be made nonfinal, in order to afford Applicant a fair opportunity to reply to the Examiner's comments which should be in compliance with the requirements of 37 C.F.R. § 1.104.

Second, in order to establish anticipation under 35 U.S.C. § 102, the Examiner must show that each and every element as set forth in the claim is found, either expressly or inherently described, in *Alie*. *See* M.P.E.P. § 2131. *Alie*, however, does not disclose each and every element of Applicants' claims. Specifically, *Alie* does not disclose or suggest at least Applicant's claimed "performing a first, SIM-based authentication of the user's data processing terminal in the data processing system at an authentication data processing server" and "conditioning the authentication of the user's data processing terminal in the data processing system to a second authentication," as recited in independent claim 33 (emphases added, independent claims 44, 48, 53, 60, and 62 containing similar recitations).

In contrast, *Alie* discloses an authentication signature system "based on a client-server architecture." *See Alie*, paragraph [0047]. *Alie* further discloses that in the authentication system, "the two major subsystems are [an] authentication server 303 and personal mobile devices 305." *Alie*, paragraph [0054]. Moreover, only one authentication process between the

server and personal mobile devices is implemented in *Alie*. See *Alie*, Figs. 6, 7a, 7b, and 8. Although *Alie* discloses that SIM-based applets, i.e., “client application that runs on the SIM” (*Alie*, paragraph [0072]) can be used to implement the system, the SIM in *Alie*’s system is only provided in the mobile handset, and there is still only one authentication process between the server and the mobile handset.

In contrast, Applicant’s claim 33 recites “performing a first, SIM-based authentication of the user’s data processing terminal in the data processing system at an authentication data processing server” and “conditioning the authentication of the user’s data processing terminal in the data processing system to a second authentication” (emphasis added).

Since *Alie* does not disclose each and every element of independent claim 33, *Alie* does not anticipate Applicant’s independent claim 33 under 35 U.S.C. § 102(b). Therefore, independent claim 33 should be allowable over *Alie*. Independent claims 44, 48, 53, 60, and 62, while of different scope, contain similar recitations as independent claim 33, and should also be allowable for the same reasons as independent claim 33. In addition, dependent claims 34-43, 45-47, 49-51, 54-59, and 61 should be allowable at least by virtue of their respective dependence from independent claim 33, 44, 48, 53, or 60, and because they recite additional features not disclosed in *Alie*. Accordingly, Applicant respectfully requests withdrawal of the rejection.

Conclusion:

Applicant requests reconsideration of the application and withdrawal of the objection and rejections. Pending claims 33-51 and 53-62 are in condition for allowance, and Applicant requests a favorable action.

The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statements are identified herein, Applicant declines to automatically subscribe to any such statements or characterizations.

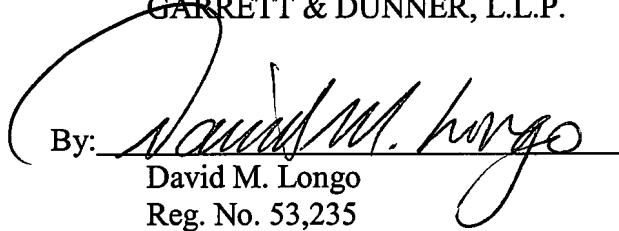
If there are any remaining issues or misunderstandings, Applicant requests the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: November 23, 2009

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